

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BLACKWELL SPENCER,

Plaintiff,

V.

## DEPARTMENT OF CORRECTIONS et al.

## Defendants.

CASE NO. C12-6026 RJB-JRC

## REPORT AND RECOMMENDATION

### NOTED FOR:

JANUARY 25, 2013

This 42 U.S.C. §1983 civil rights action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges Rules MJR 1, MJR 3, and MJR 4.

The Court recommends that this action be dismissed prior to service with the dismissal counting as a strike as defined in 28 U.S.C. § 1915(g). Plaintiff alleges that corrections officials were negligent in addressing a request to attend his sister's funeral (ECF No. 4). Plaintiff alleges that as a result of this negligence he was not allowed to attend the funeral (ECF No. 4),

1       Frivolous in forma pauperis complaints may be dismissed before service of process  
 2 pursuant to 28 U.S.C. § 1915. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). A complaint  
 3 is frivolous if “it lacks an arguable basis in law or in fact.” *Id.* at 325. Leave to amend is not  
 4 necessary if it is clear that the deficiencies in the complaint cannot be cured by amendment.  
 5 *Franklin v. Murphy*, 745 F.2d 1221, 1228 n.9 (9th Cir. 1984). Plaintiff’s complaint should  
 6 be dismissed as frivolous.

7       The Court entered an order to show cause and cited legal authority for the proposition  
 8 that there is no constitutional right to leave prison to attend a funeral (ECF No. 5 (*citing*  
 9 *Sorenson v. Minnesota Dept. of Corrections*, 2012 WL 3150722 (D. Minn. 2012))).

10      Plaintiff responded to the order to show cause and argues that the Washington  
 11 Department of Corrections grievance procedure does not work and that there is a Department  
 12 of Corrections policy that allows for inmates to make deathbed or funeral visits (ECF No. 7).  
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14      To state a claim under 42 U.S.C. § 1983, at least two elements must be met: (1) the  
 15 defendant must be a person acting under the color of state law; and (2) the person’s conduct  
 16 must have deprived the plaintiff of rights, privileges or immunities secured by the  
 17 constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535, (1981)  
 18 (overruled in part on other grounds); *Daniels v. Williams*, 474 U.S. 327, 330-31, (1986); and  
 19 (3) causation *See Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 286-87,  
 20 (1977); *Flores v. Pierce*, 617 F.2d 1386, 1390-91 (9th Cir. 1980), cert. denied, 449 U.S. 875,  
 21 (1980). When a plaintiff fails to allege or establish one of the three elements, his complaint  
 22 must be dismissed. That plaintiff may have suffered harm, even if due to another’s negligent  
 23 conduct, does not in itself necessarily demonstrate an abridgment of constitutional  
 24 protections. *Davidson v. Cannon*, 474 U.S. 344, (1986).

1 Plaintiff names persons who act under color of state law as defendants, but he does  
 2 not show he was denied a rights, privileges or immunities secured by the constitution or laws  
 3 of the United States. At best, plaintiff shows that there is a state policy that, if followed,  
 4 would have allowed officials to consider his request (ECF No. 7). Numerous federal courts  
 5 have considered this issue and held that an inmate has no constitutional right to attend a  
 6 funeral. As the Minnesota district noted:

7       Federal courts have repeatedly held that prison inmates do not have a  
 8 constitutional right to attend funerals. *See e.g., Williams v. Terrell*, Civ.A. No.  
 9 2:1-cv-87 (W.D.La.2011), 2011 WL 6181446 at \*2 (“[a] prisoner simply has  
 10 no federal statutory or constitutional right to attend a relative’s funeral”);  
*Walters v. Washington County Jail*, No. 07-5113 (W.D.Ark.2007), 2007 WL  
 11 2710433 at \*2 (“there is no constitutional right for a detainee to be released  
 12 from incarceration to attend a family member’s funeral”); *Smith v. California*  
*County of Corrections*, No. 11-9052 ABC (SS) (C.D.Cal.2012), 2012 WL  
 13 1901982 at \*3, n. 2 (“[c]ourts have ... concluded that there is no constitutional  
 14 right for an inmate to attend a family member’s funeral”); *Wilson v. East*  
*Carroll Detention Center*, No. 3:11-cv-1753, (W.D.La.2012), 2012 WL  
 15 6021713 at \*3 (“[w]hile the court is sympathetic to the Plaintiff’s desire to  
 16 attend his mother’s funeral, his claim that he was deprived of a  
 17 Constitutionally protected right when prison officials did not allow him to do  
 18 so is frivolous”); *Robinson v. City of New York*, No. 10-CV-4947 (ARR)  
 19 (E.D.N.Y.2011), 2011 WL 318093 at \*2 (“[p]risoners do not have a  
 20 constitutionally protected interest in attending the funeral of a relative”).

21       *Sorenson v. Minnesota Dept. of Corrections*, (D. Minn. 2012) 2012 WL 3150722 at  
 22 \*3. In light of the precedent cited above, the Court recommends that this action be dismissed  
 23 for failure to state a claim. This dismissal would count as a strike as defined by 28 U.S.C.  
 24 1915(g).

25       Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall  
 26 have fourteen (14) days from service of this Report to file written objections. *See also* Fed.  
 27 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes  
 28 of de novo review by the district judge. *See* 28 U.S.C. § 63(b)(1)(C). Accommodating the

1 time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for  
2 consideration on January 25, 2013, as noted in the caption.

3 Dated this 21<sup>st</sup> day of December, 2012.

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J. Richard Creatura  
United States Magistrate Judge

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